



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



303480

REPLY TO THE ATTENTION OF:

SR-6J

AUG 21 2008

SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
CERTIFIED MAIL DELIVERY

Joseph Walton
Jamestown Paint & Varnish Co.
108 Main Street
Jamestown, PA 16134

Re: Special Notice Letter for the Chemical Recovery Systems Site
Elyria, Ohio

Dear Mr. Walton:

This letter follows the general notice letter that the U.S. Environmental Protection Agency (EPA) sent to you in connection with the Chemical Recovery Systems Superfund Site (Site), located in Elyria, Ohio. In that letter, EPA notified you of your potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. EPA is now contacting you in an attempt to resolve your responsibility at the Site.

Background

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Chemical Recovery Systems site, EPA identified you as one of approximately 75 viable non-deminimis potentially responsible parties (PRPs) that contributed hazardous substances to the Site. Under the federal Superfund law, you and the other PRPs are responsible for the costs of cleaning up the Site. EPA has selected a cleanup approach (formally known as a remedial action) for the Site which is described in a document called a Record of Decision (ROD) issued by EPA on October 30, 2007.

Special Notice and Negotiation Moratorium

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between you, the other PRPs, and EPA for implementation of the response action. Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium, EPA will not begin response actions at the Site. However, EPA reserves the right to take action at the Site at any time should a significant threat to the human health or the environment arise.

During this 60-day period, you and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the response action at the Site. The 60-day negotiation period ends 60 days from the date of your receipt of this letter. The 60-day negotiation moratorium will be extended for an additional 60 days if you provide EPA with a "good faith offer" to conduct or finance the response action and reimburse EPA for its costs incurred to date within the first 60 days. If EPA determines that your proposal is not a "good faith offer," you will be notified in writing of EPA's decision to end the moratorium. If the moratorium is extended for an additional 60 days, negotiations will conclude 120 days after your receipt of this letter. If settlement is reached between EPA and the PRPs within the 120-day negotiation moratorium, the settlement will be embodied in a Consent Decree for Remedial Design/Remedial Action (RD/RA). When approved by EPA and the U.S. Department of Justice (DOJ), the Consent Decree will then be lodged in federal court.

If a "good faith offer" is not received within 60 days, or a timely settlement cannot be reached, EPA may take appropriate action at the Site, which may include either of the following options: (1) EPA may fund the remedial action and pursue a cost recovery claim under Section 107 of CERCLA, 42 U.S.C. § 9607, against you and/or the other PRPs; or (2) EPA may issue a Unilateral Administrative Order (UAO) to you and/or the other PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 9606, requiring you or them to perform the work described in the ROD. If the recipients of a UAO refuse to comply with the UAO, EPA may pursue civil litigation against the recipients to require compliance.

Good Faith Offer

A proposed Consent Decree and Statement of Work are included with this letter as Attachment A to assist you in developing a "good faith offer."¹ As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if you submit a "good

¹ The attached Consent Decree is based on the model RD/RA Consent Decree (May 2001) and on subsequent revisions, all of which are available on the Internet at: http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub_id=1234

faith offer" to EPA. A "good faith offer" to conduct or finance the remedial action is a written proposal that demonstrates the qualifications and willingness of the PRPs to perform such work and includes the following elements:

- Compliance with the requirements in the enclosed fact sheet, "Understanding the Superfund Alternative Approach." These include use of liquid financial assurance instruments, language to address NPL listing after partial cleanup, provision of funds by PRPs for technical assistance for communities, and language to address natural resource damage claims (see Enclosure 1);
- A statement of your willingness and financial ability to implement the requirements of the ROD and proposed Consent Decree and that provides a sufficient basis for further negotiation;
- A demonstration of your technical capability to carry out the remedial action, including identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s);
- A detailed statement of work or work plan identifying how you intend to proceed with the remedial action;
- A statement of your willingness to reimburse EPA for costs EPA will incur in overseeing your implementation of the remedial action;
- A response to the proposed Consent Decree. If your offer contemplates modifications to the Consent Decree, please make revisions or edits to the Consent Decree and submit versions showing the proposed modifications to it in WordPerfect and in Word;
- A list identifying each party on whose behalf the offer is being made, including name, address, and phone number of each party;
- The name, address, and phone number of the party who will represent you in negotiations; and
- The name, address, and phone number of the party or steering committee that will represent the PRPs in negotiations.

Demand for Reimbursement of Costs

With this letter, EPA demands that you reimburse EPA for its costs incurred to date, and encourages you to voluntarily negotiate a Consent Decree in which you and the other PRPs agree to perform the RD/RA.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include EPA oversight of response activities, including oversight of the completion of the remedial investigation/feasibility study (RI/FS) Report and EPA's issuance of a Proposed Plan and ROD for the Site. EPA is seeking to recover from you and the other PRPs its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the approximate total response costs identified through January 31, 2008, for the Site are \$835,529.04. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from you and the other PRPs for the above amount plus all interest authorized to be recovered under Section 107(a) associated with response costs identified for the Site. A summary of the response costs identified for the Site is included with this letter as Attachment B.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to you. Most insurance policies will require timely notification to the carrier(s) of a claim. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your first contact with the Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that you file for protection in a bankruptcy court, you must include EPA as a creditor, because EPA has a potential claim against you. EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

PRP Steering Committee

To assist PRPs in negotiating with EPA concerning this matter, EPA is enclosing with this letter a list of the names and addresses of other PRPs to whom it is sending this Notice (see Enclosure 2).

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among them, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. This Administrative Record can be viewed at EPA Region 5's Superfund Record Center, located in Room 711 at 77 W. Jackson Blvd., Chicago, IL 60604, as well as at the Site information repository located at the Elyria Public Library, 320

Washington Ave., Elyria, OH, and is available to the public for inspection and comment. You may wish to review the Administrative Record for assistance in responding to this letter, but a review should not delay such response beyond the 60-day period provided by CERCLA.

PRP Response and EPA Contact Person

You are encouraged to contact EPA within thirty (30) days of your receipt of this letter to indicate your willingness to participate in future negotiations concerning the implementation of the selected remedial action. You may respond individually or through a steering committee if such a committee has been formed. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities.

Your response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the remedial action selected for the Site, should be sent to:

Thomas Nash, Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5, C-14J
77 West Jackson Blvd.
Chicago, IL 60604

with a copy to:

Mary Tierney, Remedial Project Manager
U.S. Environmental Protection Agency
Region 5, SR-6J
77 West Jackson Blvd.
Chicago, IL 60604

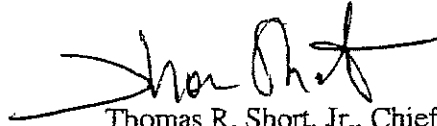
The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

In addition, EPA has notified the Federal Natural Resource Trustees of its intention to perform or enter into negotiations for the performance of response actions at the Site.

If you have any questions regarding the technical aspects of this letter, please contact Mary Tierney, Remedial Project Manager, at (312) 886-4785. Please direct legal questions to Thomas Nash, Associate Regional Counsel, at (312) 886-0552.

My staff and I look forward to working with you during the coming months.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Short", with a stylized flourish at the end.

Thomas R. Short, Jr., Chief
Remedial Response Branch #2

Enclosures (2)
Attachments (2)

cc: Bruce Babcock, Field Solicitor
Office of the Solicitor
U.S. Department of the Interior
Three Parkway Center, Suite 385
Pittsburgh, PA 15220

Michael T. Chezik
Regional Environmental Officer
U.S. Department of the Interior
Office of Environmental Policy and Compliance
RM 244, U.S. Custom House
200 Chestnut Street
Philadelphia, PA 19106

Marguerite Matera
NOAA Office of General Counsel
One Blackburn Drive
Gloucester, MA 01930

Drew Bergman
Deputy Director of Legal Affairs
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

Tony Logan, Chief Counsel
Ohio Department of Natural Resources
2045 Morse Road, Building D3
Columbus, OH 43229-6693

Tim Kern
Assistant Attorney General
Environmental Enforcement Section
Ohio Department of Attorney General
30 E. Broad Street, 25th Floor
Columbus, OH 43215

Regional Director
U.S. Fish and Wildlife Services
One Federal Drive
Fort Snelling, MN 55111